Crl.A. 166/2003
BEFORE
THE HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr.K.K.Gupta, learned Amicus Curiae appearing for the appellant and Mr.B.L.Singh, learned Public Prosecutor, Assam.

This appeal is directed against judgment and order dated 31.12.2002 passed by the learned Additional Sessions Judge (Adhoc), Barpeta in Sessions Case No.3/2000 convicting the accused appellant under Section 307 IPC sentencing to undergo imprisonment for 5 years and to pay fine of Rs.2000/-, in default in payment of fine, to undergo further imprisonment for two months. Hence, the present appeal.

The prosecution case, in brief, is that on 13.05.1999 while PW-2 Ranjit Das was sleeping in the house of Harihar Das along with the accused, the accused picked up an Axe and assaulted PW-2 causing injuries on his back and leg, whereupon the injured raised alarm. PW-3 Harihar Das has also seen the incident and he also raised alarm, whereupon the accused fled the scene. Two witnesses have deposed about the assault made by the accused. The injured was examined by Dr. Dilip Kumar Das (PW-9), who found multiple cut injury near anus, forearm, hand and back of PW-2 and all the flexor and extensor tenders were cut wherein 3rd, 4th and 5th metacarpet bones were also cut.

Learned Amicus Curiae has submitted that the accused was suffering from mental illness. In this case, the defence has examined three witnesses. We have perused the testimony of those witnesses including Dr. Dilip Das, who was examined as Court witness. The evidence of Dr. Das clearly establishes that the accused was not suffering from any mental illness. The settled position of law on this score is that the burden of proving insanity lies on the accused and we find that the learned trial Court has rightly rejected the same as appellant failed to establish the same.

Considering the materials and evidence on record, we affirm the order of conviction under Section 307 IPC. So far the sentence of imprisonment of five years is concerned, we find that the accused/appellant was in jail custody from 15.05.99 to 24.06.99 and thereafter from 31.12.02 to till date nearly four years two months. We, therefore, reduce the sentence to the period already undergone. The accused/ appellant be released forthwith, if not wanted in any other case.

The appeal stands disposed of .

Send down the record.

Fees of learned Amicus Curiae is fixed at Rs.2000/-